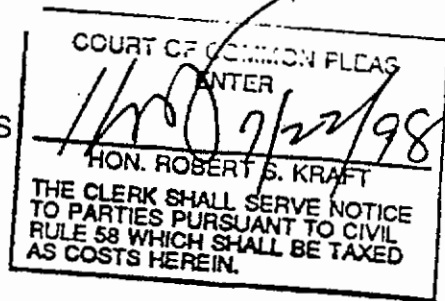


COURT OF COMMON PLEAS
CRIMINAL DIVISION
HAMILTON COUNTY, OHIO



STATE OF OHIO

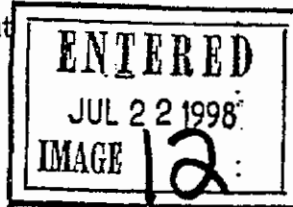
CASE NO. B-925607

Plaintiff-Respondent

vs.

MICHAEL BIES

Defendant-Petitioner



FINDINGS OF FACT,
CONCLUSIONS OF LAW, ENTRY
DISMISSING PETITION TO
VACATE

This matter is before the Court on the defendant's Petition to Vacate, and the State's motion for judgment pursuant to R.C. 2953.21(C). The Court determines that all issues can be resolved without an evidentiary hearing, and that therefore discovery is not appropriate

The defendant's petition to vacate contains fifteen claims for relief, each of which will be disposed of individually.

I. The defendant's first claim for relief is an allegation that the court improperly relied on a victim impact statement in imposing sentence. As to this claim the Court makes the following Findings of Fact:

- (1) The defendant was sentenced on other offenses besides
the aggravated murder count



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The Court makes the following Conclusions of Law:

- (1) This claim is not supported by sufficient evidentiary documents.

State v. Williams, 74 Ohio App.3d 686 (1991).

(L) Defendant's twelfth claim is that trial counsel failed to request expert assistance to challenge the state's procedures in collecting physical evidence. As to this claim, the Court makes the following Findings of Fact:

- (1) Defendant makes no showing of how he was prejudiced in this regard. State v. Bradley, 42 Ohio St.3d 136 (1989).

The Court makes the following Conclusion of Law:

- (1) This claim is not supported by sufficient evidentiary documents and is, therefore, rejected. State v. Williams, 74 Ohio App.3d 686 (1991).

V. The defendant's fifth claim for relief that it is cruel and unusual punishment to execute a retarded person. As to this claim, the Court makes the following Findings of Fact:

- (1) The defendant is shown by the record to be mildly mentally retarded with an IQ of about 69.

The Court makes the following Conclusion of Law:

- (1) As a matter of law, a mildly mentally retarded defendant may be Punished by execution. State v. Holloway, 38 Ohio St.3d 239 (1988).